IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

WP(C).No. 19689 of 2006(R)

PETITIONER:

MADAKKAL CHATTICKAL BEEYASUMMA,
'IQBAL MANZIL', PUNCHAKKADU, PAYANNUR P.O.,
KANNUR.

BY ADV. SRI.SERGI JOSEPH THOMAS

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR (L.A.),
LAND ACQUISITION (NAVAL ACADEMY),KANNUR,
NOW SPECIAL TAHSILDAR (L.A.),EZHIMALA NAVAL
ACADEMY, PAYYANNUR, KANNUR DISTRICT.

2. THE DISTRICT COLLECTOR, KANNUR.

BY GOVERNMENT PLEADER SRI.BENNY VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.19689/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: True copy of the application dated 24.3.93 filed under Sec.28(A) of the L.A. Act filed by the petitioner.

EXT.P2: True copy of the application submitted by the petitioner to the 1st respondent dtd. 22.5.98.

EXT.P3: True copy of the application filed by the petitioner before the 1st respondent dtd. 21.1.2000.

EXT.P4: True copy of the order dtd. 26.5.2004 filed by the petitioner of the 1st respondent.

EXT.P5: True copy of the application dtd. 16.6.2004 filed by the petitioner before the 1st respondent.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 19689 OF 2006

Dated this the 31st day of January, 2007

J U D G M E N T

Petitioner is an owner of two pieces of land measuring 0.5600 Hec. and another measuring 0.2240 Hec. in R.S. No.288/4 of Ramanthali amsom, which was acquired for a public purpose as per 4(1) notification issued on 22/2/83. Eventually an award was passed. Subsequently, based on the judgment in LAR 184/87 in respect of similar lands, the petitioner preferred Ext.P1 application for redetermining the compensation under Section 28 (A) of the Kerala Land Acquisition Act. Ext.P1 was filed as early as on 24/3/93. Finding that no orders are passed thereon, petitioner filed OP No.1570/1994 for a direction to consider and dispose of Ext.P1. It is the common case of the parties that this court directed consideration of Ext.P1 and dispose of the same in accordance with law. But so far, Ext.P1 has not been disposed of. In the meantime, the petitioner preferred another application Ext.P2 based on the award in LAR 120/87 and sought to withdraw the application Ext.P1 by filing Ext.P3. Ext.P3 is dated 21/1/2000. But the respondent by Ext.P4 dated 26/5/2004 dismissed Ext.P2

application on the ground that Ext.P1 application is being processed. The grievance of the petitioner is that while no orders are passed on Ext.P1 even after a lapse of 12 years and even without considering his application to withdraw Ext.P1 as sought for in Ext.P3, rejection of the second application is clearly illegal. The result is that claim of the petitioner for redetermination is not met in Ext.P1 or P2. Thereafter the petitioner sought to review Ext.P4 order by filing Ext.P5 and it is at that stage the present writ petition was filed.

2. In the counter affidavit filed by the State, the order Ext.P4 was justified and also said that there is no question of review of that order as there is no power to review. Further Ext.P4 was passed in the circumstances that Ext.P1 is being processed.

3. Heard both sides.

4. It is true that two parallel applications claiming the same relief could not be made and considered. But in this case Ext.P1 is an application claiming the benefit of the judgment in LAR 184/87 whereas Ext.P2 is a claim for redetermination based on LAR 120/87. Further, there was no consideration of his claim

Ext.P1 on merits, in which case alone, the claim under Ext.P2 could be barred by the principle of res judicata. In so far as Ext.P1 has not been considered and disposed of on merits till date, the rejection of Ext.P2 after receipt of Ext.P3 application for withdrawing Ext.P1 is not justified.

5. In the circumstances, since the petitioner has already sought to withdraw the application Ext.P1 by filing Ext.P3, Ext.P1 will stand dismissed as withdrawn. Ext.P2 application will stand restored to file and there will be a direction to the first respondent to consider Ext.P2 and dispose of the same in accordance with law expeditiously, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

6. Petitioner shall produce a copy of this judgment along with copy of the writ petition before the respondents for information and compliance.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp